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NOTES OF CASES.

GUARDIANS AD LITEM—APPOINTMENT OF, BY JUSTICE OF THE PEACE.—The somewhat novel question whether a justice of the peace may appoint a guardian *ad litem* for an infant defendant, sued in the justice's court, recently arose in the District of Columbia. The justice having assumed jurisdiction to make the appointment, an appeal was taken to the Supreme Court of the District, and the action of the justice was sustained, as noted in the *Washington Law Reporter*.

It is an interesting question whether in Virginia such appointment would be valid. Section 3255 of the Virginia Code seems to make provision only for cases pending in courts of record.

Quere: Has a justice inherent power to appoint a guardian *ad litem* in the absence of statute? If not, and the Virginia statute does not authorize the appointment, what is to be done when an infant is sued before a justice? Will some expert in justice-of-the-peace practice solve the problem for us?

INJURIES CAUSED BY FRIGHT.—We have heretofore noticed several cases involving the question whether injuries caused by fright, without physical contact, will constitute a cause of action when due to the negligence of the defendant. See 6 Va. Law Reg. 190, 492.

In the recent case of *Ford v. Schliessman* (Wis), 83 N. W. 761, it was held that where the fright was caused by an assault on the plaintiff by the defendant, damages might be recovered for the result of the fright, though there was no battery.

The question has more recently been dealt with by the English courts, and the *Law Magazine and Review* thus comments upon it:

"The case of *Victorian Railway Commissioners* (App.) v. *Coultas and wife* (Resp.) (58 L. T. Rep. 390), which was determined by the Privy Council in 1888, decided where a husband and wife were crossing a line on a level crossing, the gate of which has been negligently left open by the company's servants, and while they were in the act of crossing, a train came by at high speed and they narrowly escaped being run over, but did not sustain any physical injury, yet the wife fainted with terror and suffered a shock to her nervous system, and was ill for a long time, that damages for the injury sustained by the female respondent and the consequent expenses caused to her husband were too remote to be recovered in an action. This decision was quoted in *Pugh v. London, Brighton and South Coast Railway Company* (74 L. T. Rep. 724), before the Court of Appeal in 1896, but was deemed by the court to be a different kind of case from that then before it. In the case, however, of *Dulieu v. R. White & Sons* (111 L. T. N. 158), just decided by a Divisional Court (Kennedy and Phillimore, JJ.), a horse belonging to the defendants being negligently driven came into the public-house where the wife of the plaintiff was sitting behind the bar. The horse did not come into physical contact with the plaintiff, but its sudden appearance frightened her greatly, and in consequence of this fright, she being then *enceinte*, suffered a miscarriage. It was contended on the principle laid down by the Privy Council in

the above case of *Victorian Railway Commissioners v. Coultas and wife* that damages due to mere fright caused by negligence without any malice is not in itself actionable. The court, however, held that the last-mentioned case was not binding on an English court, and would not be followed in the case then before it, and decided in favor of the plaintiffs.

PRINCIPAL AND AGENT—UNDISCLOSED PRINCIPAL.—We are also indebted to the *Law Magazine and Review* for the following comment on the recent House of Lords decision in *Durant v. Roberts*, in which it was held (reversing the lower court) that where one is not in fact not an agent for another, but makes a contract, in his own name, with the undisclosed intention that it shall be for another's benefit, such other person cannot ratify the contract and thus become the undisclosed principal:

"In *Durant and Co. v. Roberts and Keighley, Maxsted and Co.* ([1900], 1 Q. B. 629), the Court of Appeal determined, in an action for non-acceptance of wheat sold by the plaintiffs to the defendants, that a contract made by a person intending to contract on behalf of another, but without his authority, may be ratified by that other, and so made his own, although the person who made the contract did not profess at the time of making it to be acting on behalf of a principal. This the House of Lords have reversed (111 L. T. N. 83), holding that when a man makes a contract in his own name without disclosing that he is acting as an agent, and without any authority so to act, but with an intention in his own mind to make the contract on behalf of another person, that person cannot ratify the contract. In the Court of Appeal, A. L. Smith, L. J., had dissented from the other judges, and thereupon must be deemed to be on the side of the House of Lords. The decision is a very important one, and of necessity throws discredit on several earlier cases, such as *Watson v. Swann* (11 C. B., N. S. 769), and *Tiedemann v. Ledermann* ([1899], 2 Q. B. 63)."

The rule thus announced by the House of Lords is sustained in Anson on Cont. (8th ed.) 405; Addison on Cont. (9th ed.) 305; Chitty on Contracts (13th ed.) 264-265. It seems sustained also by the American authorities as cited by Prof. Mechem in his excellent work on Agency, sec. 127. The latter author thus states the rule:

"The act ratified must also have been done by the assumed agent as agent, and in behalf of the principal. If the act was done by him as principal, and on his own account, it cannot thus be ratified."